

Exhibit 1

END-USER LICENSE AGREEMENT

LICENSE FOR FREIGHT CONTROL SYSTEM SOFTWARE

LICENSEE:

Ralph Stussi
Fleming Foods, Inc.
91-315 Hanua Street
Kapolei, Hawaii 96707

LICENSOR:

Wayne Berry
P.O. Box 549
Haleiwa, Hawaii 96712

IMPORTANT-READ CAREFULLY: This End-User License Agreement ("EULA") is a legal agreement between you (Fleming Foods, Inc.) and Wayne Berry for the software product identified above, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation ("SOFTWARE PRODUCT"). An amendment or addendum to this EULA may accompany the SOFTWARE PRODUCT. BY INSTALLING, COPYING, OR OTHERWISE USING THE SOFTWARE PRODUCT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA.

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1. **GRANT OF LICENSE.** This EULA grants you the following rights provided that you comply with all terms and conditions of this EULA:
 - a. **Types of Software.** The SOFTWARE PRODUCT contains some or all of the following types of software: Server Software, Client Software, Screens, Reports, Database and "Glue Logic" or Integration Code.
 - b. **Server Software and Database.** At any given time, you may install one copy on a single computer.

HF 00252



Page 1 of 5
October 29, 1999

- c. Client Software, Screens, Reports, "Glue Logic" or Integration Code. At any given time, you may install up to one copy on up to ten (10) separate computers.
- f. This EULA is not transferable to anyone other than Fleming Foods, Inc.
- g. Additional Software. Any software provided to you by Wayne Berry which updates or supplements the original SOFTWARE PRODUCT is part of the SOFTWARE PRODUCT and is governed by this EULA, unless other terms of use are provided with such updates or supplements. Any software provided to you along with the SOFTWARE PRODUCT that is associated with a separate end-user license agreement is licensed to you under the terms of that license agreement, except if this EULA specifically sets forth the terms of use for such software then the terms set forth in this EULA shall apply.
- h. Reservation of Rights. All rights not expressly granted are reserved by Wayne Berry.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS. For SOFTWARE PRODUCT.

- a. Software Transfer. You may transfer the SOFTWARE PRODUCT to another computer, provided that it is removed from the computer from which it is transferred.
- b. Rental. You may not rent, lease, or lend the SOFTWARE PRODUCT.
- c. Notice to Users. You shall inform all users of the SOFTWARE PRODUCT of the terms and conditions of this EULA.
- d. Limitation on Modifications, Reverse Engineering, Decompilation, and Disassembly. You may not modify, reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT.
- e. Performance or Benchmark Testing. You may not disclose the results of any benchmark test of the SOFTWARE PRODUCT.
- f. Termination. Without prejudice to any other rights, Wayne Berry may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the SOFTWARE PRODUCT and all of its component parts.
- g. Consent to Use of Data. With respect to technical information and data you provide to Wayne Berry as part of any (if any) support services related to the SOFTWARE PRODUCT ("Support Services"), you agree that Wayne Berry (and his affiliates and agents) may collect, process and use such information for its

HF 00253

business purposes, including but not limited to product support and development.

- h. Application Sharing Technology. The SOFTWARE PRODUCT may contain technology that enables applications to be shared between two or more computers, even if an application is installed on only one of the computers. You may not use this technology.

3. **INTELLECTUAL PROPERTY RIGHTS.** All title and intellectual property rights in and to the SOFTWARE PRODUCT (including but not limited to any database designs, report designs, custom code, functional designs, images, photographs, animations, video, audio, music, text, and "applets" incorporated into the SOFTWARE PRODUCT), and any copies you are permitted to make herein are owned by Wayne Berry. You may not copy any printed materials accompanying the SOFTWARE PRODUCT.

4. **ENTIRE AGREEMENT.** This EULA (including any addendum or amendment to this EULA which is included with the SOFTWARE PRODUCT) are the entire agreement between you and Wayne Berry relating to the SOFTWARE PRODUCT and the Support Services (if any) and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the SOFTWARE PRODUCT or any other subject matter covered by this EULA.

LIMITED WARRANTY

THERE ARE NO WARRANTIES EXPRESSED OR IMPLIED. THE SOFTWARE PRODUCT IS MADE AVAILABLE UNDER THIS EULA "AS IS" WITH ANY REVISIONS UP TO AND INCLUDING WORK PERFORMED BY WAYNE BERRY AS OF OCTOBER 29, 1999.



LICENSOR: Wayne Berry



Date

HF 00254

ADDENDUM TO END-USER LICENSE AGREEMENT

ADDENDUM FOR FREIGHT CONTROL SYSTEM SOFTWARE

1. In exchange for Wayne Berry (LICENSOR) granting this EULA to Fleming Foods, Inc (LICENSEE), LICENSEE agrees to employ all former API employees of record date (September 1, 1999) beginning November 1, 1999 for a period of not less than 1 year and at their former or better pay scale and benefit package. This employment agreement shall not include Jack Borja. LICENSOR will not be in breach of this agreement if any of the "former API employees" quit or create a disciplinary condition that requires dismissal from LICENSOR's employ.
2. In exchange for LICENSOR granting LICENSEE this EULA, LICENSEE agrees to indemnify Jack Borja from any and all personal liabilities associated with the former API / Fleming Partnership, including but not limited to the 4 Trucks leased specifically to facilitate shipments to LICENSEE, the forklifts and ancillary equipment leased to facilitate shipments to LICENSEE, the computer specifically leased to facilitate shipments to LICENSEE and any legal actions taken to protect the API / Fleming Partnership. LICENSOR shall use the TRW credit reporting service to monitor the enforcement of this clause. If a bad credit report is made to TRW in connection with this former API / Fleming Partnership and cannot be remedied and removed within 60 days, LICENSEE will have violated this EULA.
3. LICENSOR will not be bound by any prior or past agreements that may restrict LICENSOR's legal remedies. Specifically, LICENSOR is not bound by any restrictions to any form of arbitration with the LICENSEE and may specifically pursue any and all legal remedies in the appropriate court including lawsuits and injunctive relief. Effective November 1, 1999, this agreement supercedes all prior written and oral agreements.
4. The SOFTWARE PRODUCT may only be used by LICENSEE in the State of Hawaii, within the LICENSEE's facility.
5. LICENSEE agrees that LICENSEE has been granted access to proprietary intellectual property and trade secrets contained in the SOFTWARE PRODUCT and may not replace this SOFTWARE PRODUCT with another custom system of comparable design or functionality without the burden of proving that the replacement custom software was developed without the

assistance of LICENSEE and without violating this EULA. Furthermore, LICENSEE may not disclose, divulge or in any way make available to any other company or entity the proprietary intellectual property and trade secrets contained in the SOFTWARE PRODUCT.

6. LICENSEE may not use or create any additional I/O subsystems (Screens, Databases, Reports, "Glue Logic" or Integration Code) that are intended for use with or in conjunction with this SOFTWARE PRODUCT.
7. LICENSOR is under no obligation to support, modify or augment this SOFTWARE PRODUCT.
8. This SOFTWARE PRODUCT has operated for more that one year, essentially unchanged as to functionality and usage. Therefore, this SOFTWARE PRODUCT is made available to LICENSEE "as is and where is" without any other warranties expressed or implied.
9. All "Crystal Reports" used with this SOFTWARE PRODUCT must be compiled by LICENSEE. Only compiled versions of the reports, incorporated in the SOFTWARE PRODUCT, may be used by LICENSEE after December 15, 1999. LICENSEE is prohibited from making any new reports or functional and esthetic changes to any of the existing reports after September 1, 1999.
10. LICENSEE understands the original contract value of this software is \$2 million dollars. Any damages sought by LICENSOR against LICENSEE will use this amount as a basis but not a limitation of LICENSEE's obligation to LICENSOR for using this SOFTWARE PRODUCT under the terms of this EULA.



LICENSOR: Wayne Berry

10/29/99

Date